
(2010) 12 P&H CK 0525
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 11537 of 2009

Dr. Tilak Raj

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 15-12-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1), 226
Haryana Affiliated Colleges (Security of Service) Rules, 2006 — Rule 1(1), 7(1)

Citation : (2011) 162 PLR 79

Hon'ble Judges : Ritu Bahri, J; M.M. Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M Kumar, J.—This petition filed under Article 226 of the Constitution seeks annulment of Resolution No. 33, dated 27.3.2001 (P-13), passed by the Kurukshetra University, Kurukshetra, whereby unbridled power has been conferred upon the nominee of the Vice-Chancellor or nominee of the Commissioner of Higher Education to record a "dissenting note" in the proceedings of the Selection Committee, which is considered to be binding, being arbitrary and without jurisdiction as also Clause (iii) of the University Ordinance-XVI (Appendix IX-C) incorporated therein, being ultra vires Articles 14 and 16(1) of the Constitution. The Petitioner has farther sought quashing of order dated 3.3.2009 (P-15), whereby proceedings of the Selection Committee for the post of Lecturer in Punjabi could not be approved on account of "dissenting note" recorded by the nominee of the Vice-Chancellor. Still further, prayer is made for appointing the Petitioner with all consequential relief.

2. Brief facts of the case necessary for the disposal of the instant petition are that on 21.5.2008 Guru Nanak Khalsa College, Yamuna Nagar Respondent No. 3, advertised various regular posts of Lecturers including one post of Lecturer in Punjabi in General category, under the Grant-in-Aid Scheme. Being eligible the Petitioner applied for the post of Lecturer in Punjabi. On 23.6.2008, interviews

were held. Thereafter, when the Petitioner did not receive any response from the Respondents with regard to final outcome of the selection of the post in question, he filed an application dated 11.11.2008 (P-4) under the Right to Information Act, 2005, for supply of information concerning final selection for the post of Lecturer in Punjabi. On 5.12.2008 (P-5 Colly), the Respondents supplied the information a perusal of which shows that the Petitioner was placed at Serial No. 1 in the order of merit. But his appointment was not approved because of a "dissenting note" recorded by the nominee of the Vice-Chancellor, which reads thus:

I hereby submit my dissent as the Committee recommended the name of Sr. No. 1 have no knowledge of his field.

3. On 20.12.2008, the Petitioner again sought information under the RTI whether Or. H.S. Randhawa, who had made the above dissenting note had submitted any separate marks sheet of the interview. In response thereto vide communication dated 9.1.2009 it has been communicated to the Petitioner that Dr. H.S. Randhawa had not given any separate marks sheet qua the interview marks. It has further been stated in the said communication that the other nominee of the Vice-Chancellor, namely, Dr. Ramesh Kumar had given a two page note. For obtaining that note, the Petitioner again sought information which was supplied on 23.1.2009. A perusal of the note dated 24.6.2008 sent by Dr. Ramesh Kumar, who is an expert in Punjabi, reveals that, in fact, he informed the Vice-Chancellor that Dr. Randhawa had not participated in the selection process and had not awarded any interview marks. It was further noted by him that "if anyone of the nominees gives the dissenting note, the proceedings of the selection committee be not approved by the University and the post should be re-advertised.

4. On 11.2.2009, the Petitioner made a detailed representation. Thereafter he filed CWP No. 5592 of 2009 in this Court which was disposed of with a direction to the Vice-Chancellor, Kurukshetra University to take a final decision on the said selection within a period of 3 months, vide order dated 16.4.2009. Eventually, on 20.7.2009 it has been communicated to the Petitioner as under:

In this connection, it is to inform you that this matter has already been examined at length and ultimately it was ordered by the Vice-Chancellor that the proceedings of the meeting of the Selection Committee held on 23.6.2008 be not approved and the Principal of the College be requested to re-advertise the post and take further necessary action in the matter to fill up the post as per rules. Accordingly, the Principal has been informed in this regard vide this office letter No. CBA-214B/2009/3410 dated 03.03.2009. A copy of this letter written to the Principal is enclosed for reference.

5. Having heard learned Counsel for the parties and perusing the paper book was are of the considered view that the issue whether individual view expressed by one or two members being nominees of the Vice Chancellor or Commissioner Higher Education could constitute the basis to over-ride the views of other

members favouring the selection of the Petitioner on the post of Lecturer or any other post is no longer res Integra. Similar matters, namely, Dr. Subhash Chancier Lohan v. State of Haryana and Ors. CWP No. 10027 of 2009, decided on 23.11.2010) and Seema Bansal v. State of Haryana and Ors. CWP No. 11825 of 2009, decided on 30.11.2010) came up for our consideration, wherein we have already discussed in detail Rule 7(1) of the Haryana Affiliated Colleges (Security of Service) Rules, 2006, as also various judgments rendered by Hon"ble the Supreme Court and this Court in the cases of Brahmo Samaj Education Society v. State of West Bengal 2004 (4) S.L.R. 612 ; Bihar Public Service Commission and Another Vs. Dr Shiv Jatan Thakur and Others, ; Dr. Sushma Arya v. State of Haryana 2003 (1) S.C.T. 1044 (D.B.); Ashok Kumar v. M.D.U. 1994 (3) S.C.T. 447; and Ms. Sunita Aggarwal v. State of Haryana (CWP No. 448 of 1997, decided on 31.3.1997) and vires of Clause (iv) of Sub-rule (1) of Rule 1- of the Rules have been declared as arbitrary and ultra vires of Articles 14 and 16(1) of the Constitution. Accordingly, a similar resolution dated 15.1.2008 passed by the Kurukshetra University, Kurukshetra in the case of Dr. Subhash Chander Lohan (supra) and resolution dated 14.7.2009 passed by the Maharishi Dayanand University, Rohtak, in the case of Seema Bansal (supra) refusing to approve the proceedings of the Selection Committee stood quashed directing the official Respondents in those cases to grant approval to the proceedings of the Selection Committee by ignoring the dissenting note recorded by the nominee of Vice Chancellor as well as subject expert because the Petitioner(s) fulfill the qualifications otherwise required.

6. We are of the considered view that the instant petition is squarely covered by our judgments rendered in the cases of Dr. Subhash Chander Lohan (supra) and Seema Bansal (supra). Accordingly, the Resolution No. 33, dated 27.7.2001 (P-13) passed by the Kurukshetra University, Kurukshetra, is hereby quashed. Accordingly a direction is issued to the Respondent Nos. 2 and 3 to grant approval to the proceedings of the Selection Committee by ignoring the dissenting note recorded by the nominee of Vice Chancellor as well as subject expert because the Petitioner fulfills the qualification otherwise required. The needful shall be done within a period of one month from the date of receipt of a copy of this order.